

REMARKS

Claims 1 and 13-14 are now pending.

Applicants thank the Examiners for conversations toward expeditious prosecution of this case. Applicants herein, as a result, limit the pending claims to the written description Example I **crystalline (+) enantiomer species calcium salt (E)-(3R,5S)-(+)-7-[3-(4-fluorophenyl)-1-(1-methyl-ethyl)-1H-indol-2-yl]-3,5-dihydroxy-6-heptenoic acid which exhibits a powder X-ray diffraction pattern with maxima at 2 θ values of 5.3, 11.8, 13.9, 17.5, 19.1, 22.0 and 23.1 and which has a melting point of about 220°C.¹**

35 USC § 103, Obviousness

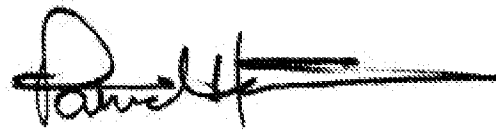
The Applicants respectfully highlight to the Examiner that *even if* it could be argued that one of ordinary skill could have tried a calcium salt, the optically active species of the claims now pending cannot be obvious as a matter of law. It is axiomatic that a claimed invention is not obvious solely because it is composed of elements that are all individually found in the prior art. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. A) No calcium salt of fluvastatin has been suggested or contemplated in the art; and, B) the fractional level of hygroscopicity exhibited by the optically active (+) enantiomer crystalline calcium salt of fluvastatin described and claimed herein, i.e., unexpected results, in fact, rebuts any *prima facie* showing of obviousness. Since the claims are now limited to the exemplified optically active *species characterized* by specific x-ray diffraction pattern AND which exhibits unexpected hygroscopicity the Applicants respectfully request that the Examiner withdraw the rejection.

The Applicants respectfully submit that Claims 1 and 13-14 are in condition for allowance. Early action toward this end is courteously solicited. The Examiner is kindly encouraged to telephone the undersigned in order to expedite any detail of the prosecution.

¹ See, Example I and paragraph [0027] of the written description.

The Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 02-2556.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patrick H. Higgins", with a long horizontal line extending to the right.

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June 12, 2009

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